

Minutes:
BOA 2012-04 – MARCH 20, 2012
CHRISTOPHER ZEBLEY – 2 BALDT AVENUE

A New Castle City Board of Adjustment Hearing took place on March 20, 2012 at 7 p.m. in the City of New Castle's Town Hall.

Present: William J. Barthel, City Council President*
Daniel R. Losco, City Solicitor
David J. Athey, City Engineer

City Personnel: Jeff Bergstrom, City Code Official

*President Barthel chaired the meeting on appointment from Mayor Donald A. Reese.

Mr. Barthel called the meeting to order at 7 p.m. Roll call was taken.

Mr. Barthel read the Notice of Public Hearing that states, "An application has been filed by Christopher Zebley, 2 Baldt Avenue, New Castle, Delaware 19720 for property located at 2 Baldt Avenue, New Castle, Delaware, parcel number 21-007.00-072, seeking variances from the R-1 Zoning District's front and side yard setback requirements to: maintain existing porch 25.5' from Baldt Avenue (required setback – 30 feet); maintain existing porch 21.3' feet from Tenth Avenue (required setback – 30 feet); to maintain concrete steps 20.0' from Baldt Avenue (required setback – 30 feet); maintain concrete steps 5.0' from side property line (required setback – 30 feet); maintain porch 0.8' from side property line (required setback – 8 feet); maintain existing house 2.78' from side property line (required setback – 8 feet); construct an addition 8.4' from Tenth Avenue (required setback – 30 feet); maintain house 8.5' from Tenth Avenue (required setback – 30 feet).

For the purpose of considering this application, the Board of Adjustment will hold a Public Hearing on Tuesday, March 20, 2012, at 7 p.m. in Old Town Hall, 2nd Floor, located at 2nd and Delaware Streets, New Castle, Delaware."

An affidavit of publication was published in the News Journal and the New Castle Weekly. Mr. Bergstrom testified the property has been properly posted.

(Messrs. Carmine Casper and Christopher Zebley were sworn in.)

Mr. Casper of Howard L. Robertson, Inc. is representing Mr. Zebley. They are seeking one (1) new variance; the other variances are "housekeeping" variances previous to the former zoning code. The area known as Baldton was subdivided in 1911, which pre-dated the modern zoning code. The housekeeping variances would allow the applicant to maintain parts of the house built prior to the zoning code. In the event the house would suffer major damage (fire, etc.) the applicant would need these variances to rebuild.

The new addition will be 8.4' from the side of the right-of-way of Tenth Avenue, which is a paper street. The street does not lead anywhere and there is no traffic present. The house is currently 8.5' off Tenth Avenue as built in the 1940s and is pre-existing, non-conforming. This designation would allow the applicant to align the addition with the existing house. Mr. Zebley intends to have Tenth Avenue vacated and added to his property in the future.

Looking at the sketch provided, Mr. Losco asked if the addition is detached from the main house. Mr. Casper said 'no', that the new addition is to be attached to the main house and the current open porch will be enclosed.

Mr. Casper stated that Mr. Zebley is experiencing exceptional practical difficulty complying to the zoning code because the house was built prior to the modern zoning code.

There are railroad tracks to one side of the house. Undeveloped Trustees land is behind the property.

Mr. Bergstrom confirmed no comments and no letters objecting to the project have been received.

Mr. Zebley has owned the house for approximately eight (8) years. Mr. Athey asked if any of the variances being requested are due to actions by Mr. Zebley. He replied that all the variances came with the house when he purchased it. A question was asked by Mr. Losco about the non-permanent structure to be relocated outside the flood plain in the rear. Mr. Zebley said it is a shed. Mr. Casper informed that a portion of the applicant's property has been removed from the flood plain because the flood maps were incorrect. The original flood line showed the entire lot in the flood plain, but an elevation study was done and a Letter of Map Amendment (LOMA) was done. As part of the LOMA the shed must be relocated out of the flood plain. The sketch that was provided to the Board does depict the flood plain accurately.

No one was present to speak in support of or object to the application. The presentation portion of the hearing was adjourned and deliberations began.

Mr. Losco summarized the presentation. The property includes pre-existing, non-conforming setbacks; the lot is odd-shaped; it is located between a paper road, railroad tracks and Trustees land; it has existed since before the modern zoning code. Exceptional practical difficulty would occur if the applicant would want to replace the structure 'as is' in the event of fire loss, etc.

Mr. Losco addressed the setback for the proposed addition. Continuing the pre-existing, non-conforming setback and extending it along a 50' wide paper road does not negatively impact on the neighborhood. Mr. Athey agreed and added if the variance is not granted and any additions needed to match the Code-required setback, the house is within that setback, thus the applicant would experience a hardship through no fault of his own.

The lot is odd-shaped and it has been a part of the character of the neighborhood for some time. The extension would be approximately 17.5' on what exists, which Mr. Losco does not believe negatively impacts on the neighborhood. Mr. Barthel agreed.

Mr. Athey reviewed the provisions contained in Section 230-57(C) of the Zoning Code. There are special conditions and circumstances that are peculiar to the land; the literal interpretation of the provisions of this Code would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of the Code; the special conditions and circumstances do not result from the actions of the applicant; and granting the variance will not convey on the applicant any special privilege that is denied by this Code to other lands, structures, or buildings in the same district.

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Mr. Losco moved to approve the variances as requested citing the reasons stated.
Mr. Athey seconded the motion. The motion was approved.

The hearing was adjourned at 7:20 p.m.

Respectfully submitted,

Debbie Turner

Debbie Turner
Stenographer